

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Competitive Product Prices
Global Expedited Package Services 3 (MC2010-28)
Negotiated Service Agreement

Docket No. CP2012-34

ORDER APPROVING GLOBAL EXPEDITED PACKAGE SERVICES 3
NEGOTIATED SERVICE AGREEMENT

(Issued July 2, 2012)

I. BACKGROUND

The Postal Service seeks to include a Global Expedited Package Services (GEPS) 3 contract (Agreement) within the GEPS 3 product.¹ For the reasons discussed below, the Commission approves the addition of the new Agreement to the GEPS 3 product.

Product description. GEPS contracts provide customers with the ability to mail products directly to foreign destinations using Express Mail International, Priority Mail

¹ Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, June 21, 2012 (Notice). The Notice was filed pursuant to 39 CFR 3015.5.

International, or both. Notice at 4. The Commission added GEPS contracts to the competitive product list in Docket No. CP2008-5, pursuant to a Postal Service filing based on Governors' Decision No. 08-7.² It later approved GEPS 3 as a grouping within the GEPS contract product and designated the contract filed in Docket No. CP2010-71 as the baseline agreement for assessing the functional equivalency of future agreements.³ *Id.* at 1-2.

New GEPS 3 Agreement. On June 22, 2012, the Commission issued Order No. 1375 noticing the Postal Service's filing of a new GEPS 3 Agreement, along with supporting data and information.⁴ The new Agreement is scheduled to take effect after all regulatory approvals are obtained and to remain in effect for one calendar year after the effective date, unless terminated earlier. Notice, Attachment 1 at 6.

The Postal Service's position. The Postal Service asserts that the new Agreement shares cost and market characteristics that are similar to those of the baseline agreement. It notes that Governors' Decision No. 08-7 establishes a pricing formula and classification to ensure that each GEPS contract meets the criteria of 39 U.S.C. § 3633 and related regulations, so the costs of each contract conform to a common description. Notice at 3. It also observes that proposed Mail Classification Schedule language requires that each GEPS contract cover its attributable costs. *Id.* It asserts that the new Agreement meets the Governors' criteria and thus exhibits cost and market characteristics similar to the previous GEPS contracts. *Id.*

The Postal Service describes the new Agreement's functional terms as the same as the baseline agreement, with comparable benefits. *Id.* It therefore asserts that the

² See Docket No. CP2008-4, Order No. 86, Order Concerning Global Expedited Package Services Contracts, June 27, 2008. The Postal Service's filing in Docket No. CP2008-5 was based on Governors' Decision No. 08-7 filed in companion Docket No. CP2008-4.

³ See Docket Nos. MC2010-28 and CP2010-71, Order No. 503, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010.

⁴ Notice and Order Concerning Additional Global Expedited Package Services 3 Contract, June 22, 2012 (Order No. 1375). See 77 FR 38682 (June 28, 2012).

new Agreement is functionally equivalent to the baseline agreement and should be added to the competitive product list as a GEPS 3 contract. *Id.* at 4.

The Postal Service further notes that prices in GEPS contracts may differ depending on the volume or postage agreements and when the agreement is signed (due to incorporation of updated costing information); however, it contends that price differences do not alter the functional equivalency of the contracts. *Id.* at 4.

The Postal Service asserts that the new Agreement, like the baseline agreement, fits within the parameters outlined in Governors' Decision No. 08-7, but identifies 12 differences. *Id.* It asserts that these do not affect the fundamental service being offered or the fundamental structure of the contract, and claims nothing detracts from the conclusion that the new agreement "is 'functionally equivalent in all pertinent respects'" to the baseline contract or compliance with 39 U.S.C. § 3633. *Id.* at 6. It therefore requests that it be included within the GEPS 3 contract product. *Id.*

Public Representative's comments. The Public Representative concludes that the new Agreement is functionally equivalent to the baseline agreement and comports with relevant provisions of title 39.⁵ He notes that the terms of the new Agreement vary somewhat from the baseline agreement, but does not consider them significant enough to affect functional equivalency. PR Comments at 2. He also states that pricing reflects appropriate increases in costs, yet still comports with Governors' Decision No. 08-7. *Id.* Based on these considerations, the Public Representative recommends that the Commission add the new Agreement to the GEPS 3 product grouping. *Id.*

II. COMMISSION ANALYSIS

Scope and nature of review. The Commission's responsibilities in this case are to ensure that the new contract (1) is functionally equivalent to the baseline agreement; and (2) satisfies the requirements of 39 U.S.C. 3633 and applicable Commission rules.

⁵ Public Representative Comments, June 29, 2012, at 1-2 (PR Comments).

Functional equivalence. The Commission has reviewed the Notice, supporting financial analyses provided under seal, and the Public Representative comments. It agrees that the new Agreement and the baseline agreement are similar and that the differences between them do not foreclose a finding of functional equivalency. It therefore concludes that the new Agreement may be included in the GEPS 3 product.

Section 3633(a) considerations. The financial data the Postal Service has filed support a conclusion that the prices for the new Agreement satisfies the three criteria of 39 U.S.C. § 3633(a). Specifically, the new Agreement should not result in competitive products being subsidized by market dominant products, in compliance with 39 U.S.C. § 3633(a)(1), and should cover its attributable costs, as required by 39 U.S.C. § 3633(a)(2). In addition, it should have a positive effect on competitive products' contribution to institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the new Agreement indicates it is consistent with the provisions applicable to rates for competitive products. The Commission therefore finds that it is appropriately included within the GEPS 3 product.

Follow-up submissions. The Postal Service shall promptly notify the Commission of the effective date of the new Agreement. The Postal Service shall promptly inform the Commission if the new Agreement is terminated by either party prior to the expiration of the scheduled one-year term. In addition, within 30 days of the termination of the new Agreement, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.

III. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2012-34 is included within the Global Expedited Package Services 3 (MC2010-28) product.

2. The Postal Service shall promptly notify the Commission of the effective dates of the Agreement filed in Docket No. CP2012-34 and if it is terminated by either party prior to its scheduled termination date.
3. Within 30 days of the termination of the Agreement filed in Docket No. CP2012-34, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.

By the Commission.

Ruth Ann Abrams
Acting Secretary